

United States District Court

for the
Western District of New York

United States of America

v.

Case No. 18-MJ- 22

Mark Bieniek

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Count 1

(Cyberstalking)

Between on or about January 24, 2018, and February 16, 2018, in the Western District of New York, and elsewhere, the defendant, **MARK BIENIEK**, with the intent to injure, harass, and intimidate another person, Victim-1, did use an electronic communication service and facility of interstate and foreign commerce to engage in a course of conduct that:

- a. placed Victim-1 in reasonable fear of the death of, or serious bodily injury to, Victim-1 and an intimate partner of Victim-1, that is, Victim-2; and
- b. caused, attempted to cause, and would be reasonably expected to cause substantial emotional distress to Victim-1.

All in violation of Title 18, United States Code, Sections 2261A(2)(A), 2261A(2)(B), and 2261(b)(5).

This Criminal Complaint is based on these facts:

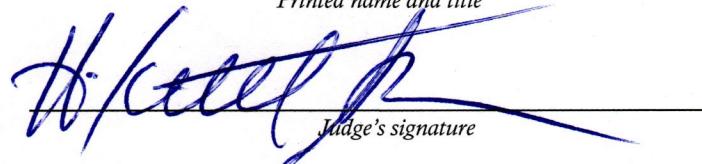
Continued on the attached sheet.



Complainant's signature

KRYSTIE BROWN
SPECIAL AGENT
FEDERAL BUREAU OF INVESTIGATION

Printed name and title



Judge's signature

HONORABLE H. KENNETH SCHROEDER, JR.
UNITED STATES MAGISTRATE JUDGE

Printed name and title

City and State: Buffalo, New York

AFFIDAVIT IN SUPPORT OF CRIMINAL COMPLAINT

I, Krystie Brown, being duly sworn, depose and say:

1. I am a Special Agent of the Federal Bureau of Investigation and entered on duty in March 2017. I am currently assigned to the Buffalo Field Office and work on cases associated with Human Trafficking, Civil Rights, and the Violent Crimes Against Children program. With the FBI, my responsibilities include investigating potential criminal violations of federal law. This includes investigating suspected violations of Title 18, United States Code, Section 2261A. As a federal agent, I am authorized to investigate violations of laws of the United States and am a law enforcement officer with the authority to execute search and seizure warrants issued under the authority of the United States. I have participated in numerous investigations of criminal activity.

2. I make this affidavit in support of the application by the United States for a criminal complaint and warrant charging **MARK BIENIEK**, the defendant, with violations of Title 18, United States Code, Sections 2261A(2)(A), 2261A(2)(B), and 2261(b)(5), as such statutes relate to cyberstalking.

3. The statements contained in this affidavit are based on my involvement in this investigation, as well as information provided to me by other law enforcement officers involved in this investigation, and upon my training and experience. Because this affidavit is being submitted for the limited purpose of establishing probable cause, it does not include

each and every fact known to me concerning this investigation. I have set forth only the facts that I believe are necessary to establish probable cause to believe that **MARK BIENIEK** committed the charged offenses.

BACKGROUND

4. According to an adult female referred to hereinafter as "Victim-1", Victim-1 was in an approximately 11-year intimate relationship with **MARK BIENIEK** and has two children with him. **BIENIEK** and Victim-1 were charged by criminal complaint together in this District in 2008 for theft of mail, misuse of social security numbers, and conspiracy. Both pleaded guilty to possession of stolen mail in violation of 18 U.S.C. § 1708. Victim-1 also has two misdemeanor state convictions for petit larceny. A criminal history check for **BIENIEK** appears to show a history of physical violence by him against Victim-1. I learned from police and court records that he was arrested on November 24, 2007, for assaulting Victim-1 with intent to cause physical injury. He was convicted upon a plea of guilty to Harassment 2nd: Physical Contact on July 15, 2008.

5. On December 17, 2011, **BIENIEK** was arrested for assaulting Victim-1 with intent to cause physical injury. In his plea agreement to violation of supervised release (08-CR-377-A, Dkt 33), he admitted that he assaulted Victim-1 by choking and kicking her, and banging her head into the arm of a chair, causing bruising and lacerations to her face and abdomen.

6. On or about June 28, 2016, **BIENIEK** was charged in the city of Buffalo with

Criminal Contempt and Harassment. This arrest was based on a violation of an Order of Protection for Victim-1. On April 25, 2017, **BIENIEK** was convicted upon a plea of guilty for criminal contempt. On that same date, an order of protection was issued by the Honorable Deborah A. Haendiges, in the Supreme Court, Erie County, New York, which was signed as received by **BIENIEK** to refrain from communication with Victim-1 except as permitted by order of a family or supreme court, in effect until April 25, 2022. At all times relevant to the below factual basis, Victim-1 resided in the Western District of New York with her current intimate partner, who is referred to hereinafter as "Victim-2". During this timeframe, according to Victim-1, **BIENIEK** lived with his brother in North Richland Hills, Texas.

FACTUAL BASIS

7. The investigation has shown that there is probable cause to believe that **MARK BIENIEK** used his cellular telephone, assigned number 716-xxx-9138 (referred to hereinafter as "target cellular telephone"), to send communications containing threats of violence to Victim-1. According to Victim-1, she recognized the number as belonging to **BIENIEK**. He has utilized that telephone number for over a year, and he posted the telephone number on his Facebook account. Victim-1 last spoke to **BIENIEK** on a voice call with **BIENIEK** utilizing the telephone number in or about August 2017 and recognized the voice as **BIENIEK**'s.

8. According to Victim-1, **BIENIEK** received notification of a Family Court appearance on or about February 26, 2018, which will require **BIENIEK** to return to Buffalo

on or before that date. Victim-1 knows **BIENIEK** received the notification because her Erie County Department of Social Services Case Worker informed her on or about January 11, 2018 that letters were sent out notifying all participating parties of the court date. The threatening communications and cyberstalking began less than a week later.

9. On or about January 25, 2018, starting at approximately 6:11 am, Victim-1 received the following messages from target cellular telephone:

- a. "I hope you DIE", "Die!!"
- b. "Die"
- c. "I may spend the rest of my life in prison. But it'll be worth it...I can't wait to see him...Texas has lots and lots of pawnshops", which based on my investigation I believe is a threat to Victim-2 and the reference to pawn shops implies being able to easily obtain a firearm.
- d. "Hi [Victim-2]! Looking forward to meeting you...My brother killed someone...so can I bitch".¹
- e. "I'm coming fir you [Victim-2]. Now I know exactly what you look like. I'll see you soon." and "Cunt who're I'm going to murder your boyfriend while you watch."

Victim-1 did not respond to these messages.

10. On or about January 27, 2018, **BIENIEK** posted on his Facebook profile, "You have torn my world apart I believe in an eye for an eye!" and "Tell little [Victim-2] I look

¹ According to Victim-1, she is aware that **BIENIEK**'s brother killed his girlfriend and himself in front of their young child. Another one of **BIENIEK**'s brother's attempted to kill his wife on or about year 2004 or 2005.

forward to showing him my new toy I bought from a pawn shop." Because **BIENIEK** previously mentioned pawn shops in Texas and spending the rest of his life in prison, this message leads me to believe that **BIENIEK** purchased a firearm from a pawn shop. This is supported by **BIENIEK** sending Victim-1 photos of himself holding an object resembling a black pistol on February 1, 2018.

11. On or about January 31, 2018, at approximately 10:01 pm Victim-1 started receiving additional threatening messages from telephone number 716-xxx-1673. An open source check of 716-xxx-1673 found that it is a voice over internet protocol number. The messages included:

a. "hey nice place. big shed out back and garage. hedges out front. pine trees. Do you usually use the side door by next to the driveway? right next to a streak and shake. also a big parking lot near you and a long driveway. Best of all it's a dead end with a great little patch of woods there. YOU fucked him while you were still saying you love me. You provoked me by sending me pictures of him and putting those pics on your profile [on] you rwont let me speak to my sons." Victim-1 believes that the person sending her these text messages was in fact **BIENIEK** because of his familiarity with her house and references to their sons.

b. "I am here and I will get you. Maybe tonight I'll just torch the place or ill wait to see the looks on your faces."

c. "see i paid a lot to put this whole plan together and i sawed off the end of my attitude adjuster. i have patience. be sure to look over your shoulder mother fucker because there will be dead bodies when I'm thru. Starting with your face getting a few slugs."

d. "I have nothing more to lose. I'm facing years in prison." "IT'S MY TURN

TO TAKE FROM YOU. HE I promise YOU. HIS HOURS ARE BEING COUNTED. I KNOW EVERYTHING ABOUT HIM And His Daddy WHO HANDED HIM ALL THAT.” Victim-1 interpreted this threat to concern Victim-2 as it is consistent with **BIENIEK**’s previously expressed perceptions of Victim-2’s socioeconomic background. Victim-1 did not respond to these messages.

12. On or about February 1, 2018, at approximately 9:57 pm, Victim 1’s cell phone received several text messages from the target cellular telephone containing images of **BIENIEK** holding an object resembling a black pistol along with the message, “It’s time [Victim-1]. I’m going to let you make the decision.”

13. On or about February 1, 2018, starting at approximately 10:04 pm, Victim-1 received more messages from the target cellular telephone, including:

- a. “This is it. You will never break me again. I’m glad he loves just so much that he’d give his life for you.”
- b. “You will never do this again to me to anyone”
- c. “I have been up for four days waiting for you. Get comfortable with thinking that im a joke and oh yeah. I know where you!”
- d. “I want you to feel the pain you have put me through”.

14. On February 9, 2018, while I was interviewing Victim-1 at her place of employment in Erie County, New York, I saw Victim-1 receive on her cell phone text messages from target cellular telephone containing photos of the outside of her place of

employment with the message, "I'm wondering...Are you planning on coming out?" Victim-1 appeared panicked upon viewing the messages and expressed relief to me that I was with her. Upon further investigation, I believe these photos were publicly available from a mapping software. Soon after, **BIENIEK** text messaged Victim-1 a sexually explicit image of a mouth with semen coming out along with the message, "For you [Victim 2]". Victim-1 told me that she recognized the photo to be of her.

15. On or about February 12, 2018, Victim-1's cell phone received additional messages from telephone number 716-xxx-8687. An open source check of 716-xxx-8687 found that it is another voice over internet protocol number. The approximately 175 text messages received within approximately eight hours starting at approximately 1:00 am contained the following:

- a. "I have nothing left [Victim-1]. You took it all. Idc what i have to do. You will hear my cries." "I have two things i must do. Get you. No matter what. Then get myself."
- b. "I know that you are alone and scared up there."
- c. "I got eyes everywhere." "So you must be [first name of Victim-2's mother] then? Well I'm definitely checking [address of Victim-2's mother] and checking out where she met the little boy she cheated on me with at [address of employment for Victim-1 and Victim-2]." "Now time to check [old address of Victim-2's family's business] then last but not least [address of Victim-2's father] and after that I use my software to start scanning credit cards with some pretty familiar names."
- d. "I pd a pvt investigator and I know [Victim-2]'s first hockey coach. His

eberything all impottant number and everyone he knows. They should have taken my advice. Id of turned myself in and my mom wouldn't be losing her fourth son. Imagine that. Chew on that for a while and i am dying inside knowing my innocent sons only know what she has said and will grow up either alone or together wo parents."

e. "I can feel the the hate for me. I can smell your feae." "Fear."

During the time these messages were sent to Victim-1, the target cellular telephone was reported by its service provider as being located at the same coordinates as **BIENIEK**'s brother's house in North Richland Hills, Texas. Later on February 12, 2018, the FBI took custody of Victim-1's cell phone, with continuing cellular service.

16. On or about February 16, 2018 at approximately 3:46 am, Victim-1's cell phone began to receive more messages from 716-xxx-8687, including:

a. An image containing two telephone numbers (one of Victim-1's cell phone and the other with a Florida area code) with the messages, "You see what came up when I paid to search this number", "[Victim-2] you and [Victim-1] are going to die", "Tomorrow", "I promise you this sir", "You are both dead";

b. At approximately 5:52 am, "Youre fucking dead", "I swear to god on my sons lives Especially you [Victim-1]".

Based on the content of these messages from 716-xxx-8687, their references to Victim-1, Victim-2, and related family members, and their consistency with the messages received from the target cellular telephone, there is probable cause to believe that the messages from 716-xxx-8687 also came from **BIENIEK**.

CONCLUSION

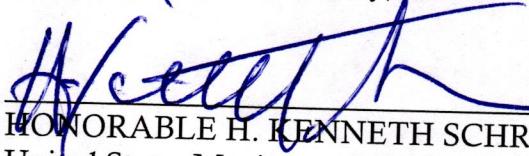
17. Based upon the above information, probable cause exists to believe that there have been violations of Title 18, United States Code, Sections 2261A(2)(A), 2261A(2)(B), and 2261(b)(5) and that **MARK BIENIEK** is the person who committed them. In consideration of the foregoing, I respectfully request that this Court issue an arrest warrant for **MARK BIENIEK**.



KRYSTIE BROWN
Special Agent
Federal Bureau of Investigation

Sworn and subscribed to before me

this 17th day of February, 2018



HONORABLE H. KENNETH SCHROEDER, JR.
United States Magistrate Judge